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REMARKS

In view of the following discussion, the Applicant submits that none of the claims now pending in the application are non-enabling, anticipated, or obvious under the respective provisions of 35 U.S.C. § 112, §102, and §103. Thus, the Applicant believes that all of these claims are now in allowable form.

It is to be understood that the Applicant, does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing this Response.

Applicant gratefully acknowledges the Examiner's indication of allowable material with respect to objected to claims 6-9, 13, 14 and 18. However, no specific action is taken with respect to these claims at this time in view of further prosecution of the independent claims from which these claims depend.

Rejection Of Claims Under 35 U.S.C. §103(a)

The Examiner has rejected claims 1-5, 10-12 and 15-17 under 35 U.S.C. §103 as being obvious and unpatentable over US Patent No. 6,172,963 issued January 9, 2001 to Larsson et. al. (hereinafter Larsson) in view of US Patent No. 5,978,359, issued November 2, 1999 to Caldara, et. al. (hereinafter Caldara). Specifically, the Examiner has indicated regarding claims 1, 10, 11 and 15 that Larsson allegedly discloses a credit-based flow control system for a switch with input and output buffers (which represent the first and second stage port processors). Larsson allegedly takes into account the degree of fullness of the output buffers when determining how many cells can be sent from each input port ("giving credit" per Col. 3, lines 21-30 and Col. 5, lines 12-23). Additionally, with Larsson allegedly showing intelligence in the switch, it can be determined which output ports are able to receive cells (per Col 4, lines 45-55). The

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Examiner offers that this description meets the limitation of an integrator block as
in the present application. Specifically, the limitation of neighboring integrator
blocks is allegedly met by Larsson in that calculating the number of cells to be
sent to a particular output buffer includes determining which input ports should be
allowed to send cells if several input ports are competing for the output buffer
(per Col. 5, lines 31-36). Larsson fails to expressly disclose sending a token bit
but, the Examiner alleges that Caldara discloses a switching architecture that
includes a first set of port processors and a second set of port processors. Said
sets of port processors can be construed as representing the first and second
stages of the subject invention respectively. Caldara also discloses a feedback
message (30) that provides an indication of buffer status at the output port.

Accordingly, the Examiner concludes that it would have been obvious to a
person of ordinary skill in the art to use the feedback message of Caldara in
combination with the credit-based flow control system of Larsson to provide a
switch that selectively sends data from a first stage of input ports to a second
stage of output ports in accordance with the fullness or availability of each output
buffer. The Examiner offers additional rejections to dependent claims 2, 3, 4, 5,
12, 15, 16 and 17 based on these combined teachings. The rejection is
respectfully traversed.

The test under 35 U.S.C. § 103 is not whether an improvement or a use
set forth in a patent would have been obvious or non-obvious; rather the test is
whether the claimed invention, considered as a whole, would have been obvious.
Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added).
Thus, it is impermissible to focus either on the "gist" or "core" of the invention,
Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed.
Cir. 1986) (emphasis added). Moreover, the invention as a whole is not
restricted to the specific subject matter claimed, but also embraces its properties
and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988)
(emphasis added).

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        Specifically, the Examiner is attempting to combine the teachings of
Caldara and Larsson to suggest the subject invention. However, upon closer
inspection of these references, deficiencies are seen that, upon combination, fail
to properly suggest applicant's invention. As indicated by the Examiner, Larsson
discloses a process of "giving credit" as per column 3 lines 21 - 30 of the
reference. Additionally, the Examiner offers that an intelligent switch disclosed in
Larsson can read the degree of fullness of the output buffers and calculate how
many cells (data packets) can be sent per column 5 lines 12 - 23 of Larsson. It
had been previously argued that the cited passage of Larsson associated with
"giving credit" is far too general to read on or suggest anything specifically
claimed. The Examiner respectfully disagreed because the claims must be given
their broadest possible interpretation. To that, the Examiner offered that the
calculation of cells or credits _represents_ the integrator block function of the
present invention.

        It is respectfully submitted that the criteria is not whether prior art
represents aspects of the claimed invention, but what the prior art _teaches_ and
subsequently whether _combined teachings_ render the claimed subject matter
obvious. Applicant offers that Larsson uses phrases like, "one could also
conceive a solution without a separate control unit..." , "(input ports would) easily
calculate how many cells can be permitted to be sent..." , "the control unit gets
to know the degree of fullness of each output buffer and can then easily calculate
how many cells can be sent..." and "through some conceivable form of priority
classification also which input ports should be allowed to send their cells..."
throughout Col. 5, lines 11-36 which was specifically cited by the Examiner.
Such general language in Larsson does not teach the detailed recitation of
corresponding and neighboring integrator blocks of the subject invention. It is
respectfully submitted that Larsson is essentially not interested in the specifics
that performs the calculations; hence, it is simply not possible to derive a specific
teaching from Larsson that could be combinable with another reference or
ordinary skill in the art to suggest Applicants' invention.

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Larsson provides no specific description of how the calculations are performed nor even cite to an existing example if it is in fact so easily performed. Language like "some conceivable form of priority classification" leaves the Applicant with the impression that this is not a point of interest, let alone distinct disclosure, for Larsson. "The (prior art) statement is of the type that gives only general guidance and is not at all specific as to the particular form of the claimed invention and how to achieve it. Such a suggestion may make an approach 'obvious to try' but it does not make the invention obvious." *Ex parte* Obukowicz, 27 USPQ 2d 1065 (citing *In re* O'Farrell, 853F.2d 894, 7USPQ 1673, 1681 (Fed. Cir. 1988). The Examiner's citation of Larsson, while noteworthy for selection based on technical field, is simply too general to derive a specific teaching of elements in Claim 1.

The Examiner then reoffers Caldara at the bottom of Page 4 of his Office Action and indicates, "(I)t is obvious that some component, such as a statistic block as in the present application, must count the number of cells in the output buffers and compare them..." However, it is well known and understood that this exact form of hindsight reconstruction is not permissible. "It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolate disclosures in the prior art to deprecate the claimed invention." In re Fritch, 972F.2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992). Thus, when Larsson and Caldara are combined, it is respectfully submitted that there is a resultant architecture of a switch without a specific implementation of assessing which packets are to be sent via token bit communication in accordance with the subject invention. Hence, one cannot arrive at a conclusion of obviousness with regard to the apparatus of Claim 1.

Similar arguments and conclusions are drawn with regard to the independent method Claim 10. Specifically, while Larsson attempts to disclose some form of "giving credit" in a data transmission system, it focuses on the

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aspects of "over-allocation" that allows the input ports to always request to send
more cells than the respective output ports can process without placing any cell
in its output buffer (column 4 lines 56 through 65). This type of system is not as
sophisticated as the subject Invention; hence, <u>would not suggest</u> to one skilled in
the art to control and manage information traffic flow in the manner claimed.
Accordingly, it is respectfully submitted that the combination of Caldara and
Larsson fail to suggest the invention recited in Independent method Claim 10.

As such, the Applicant submits that claims 1 and 10 are not obvious and
fully satisfy the requirements under 35 U.S.C. § 103 and are patentable
thereunder. Furthermore, claims 2-9, 11, 12 and 15-17 depend, either directly or
indirectly, from independent claims 1 and 10 and recite additional features
thereof. As such, and for at least the same reasons discussed above, the
Applicant submits that these dependent claims also fully satisfy the requirements
under 35 U.S.C. § 103 and are patentable thereunder. Therefore, the Applicant
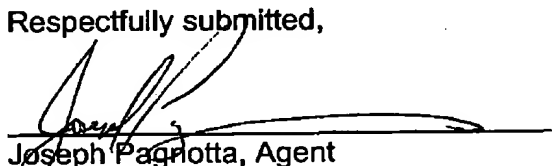respectfully request that the rejection be withdrawn.

Conclusion

Thus, the Applicant submits that claims 1-18 are in condition for
allowance. Furthermore, the specification has been amended as requested by
the Examiner. Accordingly, both reconsideration of this application and its swift
passage to issue are earnestly solicited.

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If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone <u>Mr. Eamon J. Wall</u> at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

February 24 2004

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CERTIFICATE OF FACSIMILE TRANSMISSION under 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being transmitted on <u>February 24, 2004</u> to the Commissioner for Patents, Mail Stop NON-FEE AMENDMENT, P.O. Box 1450 Alexandria, VA 22313-1450 to Facsimile No. 703-872-9306.

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